

REPRESENTATIVE FOR PETITIONER:

Richard R. Cimini, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Brian A. Cusimano, Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Richard R. Cimini	)	Petition Nos.: 44-010-14-1-5-01052-16
	)	44-010-15-1-5-01053-16
Petitioner,	)	
	)	
v.	)	Parcel No.: 44-10-30-400-030.019-010
	)	
	)	
LaGrange County Assessor,	)	County: LaGrange
	)	
Respondent.	)	Assessment Years: 2014 and 2015

Appeal from the Final Determination of the  
LaGrange County Property Tax Assessment Board of Appeals

**January 17, 2017**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**PROCEDURAL HISTORY**

1. Richard R. Cimini (“Petitioner”) timely filed his assessment appeals for 2014 and 2015 with the LaGrange County Property Tax Assessment Board of Appeals (“PTABOA”),

which issued notice of its final determinations for both years on April 22, 2016.  
Petitioner then timely filed his appeals with the Board.

2. Ellen Yuhan, the Board's Administrative Law Judge ("ALJ"), held a hearing on October 19, 2016. Neither the ALJ nor the Board inspected the property.
3. The following people were sworn and testified:<sup>1</sup>
  - For Petitioner: Richard R. Cimini
  - For Respondent: William F. Schnepf, Jr., Certified General Appraiser  
Josh Pettit, Nexus Group
4. Petitioner offered the following exhibits:
  - Petitioner Exhibit 1: Property record card ("PRC") for 625 W. 590 S.
  - Petitioner Exhibit 2: PRC for 635 W. 590 S.
  - Petitioner Exhibit 3: PRC for 7040 S. 080 E.
  - Petitioner Exhibit 4: PRC for 7136 S. 080 E.
  - Petitioner Exhibit 5: PRC for the subject property
  - Petitioner Exhibit 6: PRC for 1065 E. 700 S.
  - Petitioner Exhibit 7: Certificate of Title for mobile home
  - Petitioner Exhibit 8: List of construction costs for the garage
5. Respondent offered the following exhibits:
  - Respondent Exhibit A: Appraisal of William F. Schnepf, Jr. for 2014
  - Respondent Exhibit B: Appraisal of William F. Schnepf, Jr. for 2015
6. The following additional items are officially recognized as part of the record:
  - Board Exhibit A: Form 131 petitions
  - Board Exhibit B: Hearing notice
  - Board Exhibit C: Hearing sign-in sheet.
7. The subject property consists of a mobile home and garage located at 0915 E. 680 S. in Wolcottville.

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<sup>1</sup> Pat Monroe, LaGrange County Assessor, was sworn but did not testify.

8. Respondent determined the following assessed values:

Year	Land	Improvements	Total
2014	\$115,500	\$9,900	\$125,400
2015	\$115,500	\$11,500	\$127,000

9. Petitioner requested the following assessed values:

Year	Land	Improvements	Total
2014	\$60,780	\$9,900	\$70,680
2015	\$60,780	\$9,900	\$70,680

### **Burden**

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest

assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value increased from \$72,700 in 2013 to \$125,400 in 2014. Respondent, therefore, has the burden of proof for 2014. Assigning the burden for 2015 will depend on the final determination for 2014.

### **SUMMARY OF PARTIES’ CONTENTIONS**

#### **Respondent’s case:**

15. The subject property is a lakefront property situated on Westler Lake which is part of a large chain of various other lakes. The property is improved with an older mobile home that has a patio with a canopy. There is also a detached two-car garage and a pier.  
*Schnepf testimony: Resp’t Ex. A at 10.*
16. Respondent engaged William F. Schnepf, Jr., a certified general appraiser, to appraise the subject property. Mr. Schnepf prepared the appraisals in accordance with the Uniform Standards of Appraisal Practice (“USPAP”). He developed both the cost and sales comparison approaches to value and ultimately estimated a value of \$145,000 as of March 1 for both 2014 and 2015. *Schnepf testimony; Resp’t Ex. A at 2.*
17. Mr. Schnepf was not provided access to the property so, in arriving at his value, he relied on his observations of the exterior of the property from the street, information contained on the PRC, and GIS data to gather information. He did not observe the property from the water. According to Mr. Schnepf, the parcel is irregularly shaped, or “pie shaped,”

consisting of more lake frontage (112 linear feet) than road frontage (40 linear feet). He determined the average of the lakefront measurement and the road frontage measurement and arrived at an “effective shoreline” of 76 linear feet.<sup>2</sup> He also estimated the overall area of the property to be 13,608 square feet. *Schnepf testimony; Resp’t Ex. A at 10.*

18. Respondent disagrees with Petitioner’s claim that all of the lakes within the chain are the same and that properties located on each lake should be valued the same. Respondent contends that more people are buying property on Westler Lake because there they are not directly exposed to high-speed watersports, but nonetheless have easy access by water to Witmer and Dallas Lakes if they wish to engage in such activities. Respondent also contends that Hackenberg Lake is less desirable than Westler Lake because one must navigate a long channel in order to get to Witmer or Dallas Lake to waterski. Consequently, a lot on Westler Lake will fetch a higher price than a lot of the same size on other lakes.
19. With regard to the cost approach, Mr. Schnepf searched numerous sales on both Westler Lake and Witmer Lake in an attempt to arrive at a land value. He eventually selected four sales of vacant parcels for use in his analysis. *Schnepf testimony; Resp’t Ex. A at 21.*
20. The parcels Mr. Schnepf selected ranged from 10,535 square feet to 19,977 square feet in total area, and from 50 linear feet to 100 linear feet in lake frontage. The unit prices ranged from \$7.42 to \$13.72 per square foot in total area, and from \$1,635 to \$2,828 per linear foot of lake frontage. *Schnepf testimony; Resp’t Ex. A at 21-26.*
21. Mr. Schnepf applied the four types of analyses appraisers generally use when appraising land. Those types of analyses are: graphing analysis, ranking analysis, statistical analysis, and direct sales comparison analysis. The values produced by the four different types of analyses ranged from \$120,000 to \$165,000. In Mr. Schnepf’s opinion, the direct sales comparison analysis, which yielded the lowest value among the various analyses, represented the most accurate value. Consequently, he assigned a value of

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<sup>2</sup>  $112 \text{ (feet of lakefront)} + 40 \text{ (feet of road frontage)} = 152/2 = 76 \text{ feet of “effective shoreline.”}$

\$120,000 to the subject site for cost approach purposes. *Schnepf testimony; Resp't Ex. A at 21-26.*

22. Next, Mr. Schnepf used the *Marshall & Swift Residential Cost Handbook* to compute a cost new for the mobile home, canopy, and patio. He used comparative cost multipliers to derive a retroactive replacement cost of \$31,820 for those items as of March 1, 2014. He depreciated that cost by 90%, leaving a residual value of \$3,182 for the mobile home, canopy, and patio. He estimated the value of the site improvements such as the driveway and landscaping, among other items, at \$15,000. He valued the detached garage at \$10,000. The resulting value of all of the improvements combined totaled \$28,182. That amount, when added to the land value of \$120,000, results in a total cost approach value of \$148,000 when rounded. *Schnepf testimony; Resp't Ex. A at 11.*
23. Turning to the sales comparison approach, Mr. Schnepf searched for sales of lakefront properties containing mobile or manufactured homes. He contends there were limited sales fitting those criteria so he had to use other sales that fronted a channel as opposed to a lake. He eventually settled on six sales that occurred between June 2011 and March 2015. He adjusted the sale prices to account for differences between each comparable property and the subject property, including differences in quality, size, and age, among other items. In one instance, there was a deduction for personal property. He based his adjustments on paired sales, depreciated costs, statistical analyses, graphic analyses, interviews with market participants, and his knowledge of the subject's competitive market. *Schnepf testimony; Resp't Ex. A at 11-13.*
24. The adjusted sales prices ranged from \$144,150 to \$164,100. Mr. Schnepf considered the \$164,100 sale to be an outlier and excluded it. He reconciled the comparable sales and arrived at a value of \$145,000 for purposes of the sales comparison approach. *Schnepf testimony; Resp't Ex. A at 11-14.*
25. Mr. Schnepf then reconciled the cost approach with the sales comparison approach. He ultimately gave more credibility to the sales comparison approach because of the age of the improvements and the fact that he had not actually been on the subject property. His

final retrospective opinion of value was \$145,000 for 2014. *Schnepf testimony; Cusimano argument; Resp't Ex. A at 14.*

26. For 2015, Mr. Schnepf followed the same processes that he did with regard to the 2014 appraisal. According to Mr. Schnepf, there was no change in the value for 2015 because the market remained stable over those two years. Consequently, the value of the property for 2015 was also \$145,000. *Schnepf testimony; Resp't Ex. B at 2.*
27. Respondent disagrees with Petitioner's contention that the mobile home is personal property rather than real property. Respondent acknowledges that a mobile home might be personal property when it is not affixed to a load-bearing foundation that transfers the load below the frost line. However, Respondent contends that one would need access to the property in order to determine whether or not such was the case and, here, Respondent was not afforded that opportunity. Respondent contends, nonetheless, that the mobile home is assessable regardless of what type of property it is. *Schnepf testimony; Pettit testimony; Cusimano argument.*

### **Petitioner's case**

28. Petitioner contends the land is assessed too high. He claims the assessed value increased from \$61,000<sup>3</sup> in 2013 to \$115,500 in 2014. He further contends that the land factor applied should be 0.60, not 1.14, because his property is under-improved or under-developed. Petitioner claims that if the land factor had been properly applied, the total assessment for 2014 would be closer to the 2013 assessment, and thus more accurate. *Cimini testimony; Pet'r Ex. 5.*
29. Petitioner contends properties on Westler Lake with larger homes were assessed at a lower rate in 2014 than in 2013. He contends the county raised the land values but compensated for that by reducing improvement assessments so taxpayers would not

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<sup>3</sup> While Petitioner testified that the land was assessed at \$61,000 in 2013, the PRC for the subject property offered as Petitioner Exhibit 5 shows a value of \$61,800.

complain. According to Petitioner, the county is discriminating against people that have lots without more extravagant improvements. *Cimini testimony; Pet'r Ex. 6.*

30. Petitioner pointed to four properties on Hackenberg Lake and Atwood Lake, both non-ski lakes with 10-mile per hour speed limits, similar to the lake on which the subject property is situated. He claims land on Hackenberg Lake was assessed at \$720 per lakefront foot while land on Atwood Lake was assessed at \$608 per lakefront foot. In contrast, the subject property is assessed at \$1,765 per lakefront foot. *Cimini testimony; Pet'r Exs. 1-4.*
31. Petitioner further contends the garage was assessed at \$7,600 for 2013 and that that amount increased by 20% to \$9,500 for 2014. He claims to have paid \$7,600 to build the garage 22 years ago. According to Petitioner, the garage should be assessed at \$5,700. *Cimini testimony; Pet'r Ex. 7, 8.*
32. Petitioner also contends that the mobile home is not real property, but rather personal property. He has a certificate of title for it and paid sales tax on it when he purchased it. He claims the mobile home has been on the real property "tax rolls" for 50 years and that he has never paid personal property tax on it. He contends there is no foundation and that it has a hitch and axles. *Cimini testimony; Pet'r Ex. 7.*

#### ANALYSIS

33. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax. Ct. 2005). Actual construction costs, sale or assessment information for the subject or comparable properties, and any other

information compiled according to generally acceptable appraisal principles may also be probative. *See Kooshtard Property VI*, 836 N.E.2d at 506 n.6; *see also* Ind. Code. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

34. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
35. Respondent offered Mr. Schnepf's USPAP compliant appraisal estimating the market value-in-use as of March 1, 2014. He developed the cost approach and the sales comparison approach, which are two generally accepted valuation approaches. His valuation opinion of \$145,000, therefore, establishes a prima facie case regarding the true tax value of the subject property.
36. Petitioner offered four PRCs for properties on Hackenberg Lake and Atwood Lake to show differences in the assessed value per lakefront foot. Petitioner argues those lakes are similar to the lakes on which the subject property is situated because they are also non-ski, low-speed lakes. Here, Petitioner is attempting to present an assessment comparison.
37. Parties may introduce assessments of comparable properties to prove the market value-in-use of a property under appeal. The determination of whether the properties are comparable using the assessment comparison approach must be based on generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales comparison approach. Conclusory statements that a property is "similar" or "comparable" to another property are not probative. *Long*, 821 N.E.2d at 470. Instead, one must identify the characteristics of the subject property and explain how those

characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*

38. Petitioner failed to address any similarities or differences between the subject property and the purportedly comparable properties. Similarly, while the purportedly comparable properties are indeed lakefront properties, Petitioner failed to show how the lakes where the comparable properties are located are similar or different to the lake on which the subject property is situated. Consequently, Petitioner made no meaningful comparison of the properties to the subject property.
39. Petitioner also contends that the garage is over-assessed based on construction costs. Petitioner submitted a hand-written list of what he alleges are receipt amounts from 1993 that are purportedly the costs associated with the construction of the garage. These 1993 costs are not reflective of the assessment dates at issue and provide little probative evidence.
40. Petitioner challenges the mobile home's classification as real property. In Indiana, a "real property mobile home" is a mobile home that has a certificate of title issued by the Bureau of Motor Vehicles and is attached to a permanent foundation. 50 IAC 3.3-2-4. A "permanent foundation" is defined as "any structural system capable of transposing loads from a structure to the earth at a depth below the established frost line." 50 IAC 3.3-2-3.5.
41. Petitioner claims to have lived in the mobile home for 50 years. He offered a certificate of title to the mobile home into evidence. He contends that the mobile home is not situated on a permanent foundation but rather has axles and a hitch. On the other hand, Petitioner claims that the mobile home has been on the real property "tax rolls" for 50 years and that "therein lies money coming back to me," which seems to imply he has been paying real property tax on the mobile home for some period of time. Petitioner also admits he has not paid personal property tax on the mobile home in the past. Respondent's witness testified that one would have to perform an inspection of the

property to determine whether or not a mobile home such as the one at issue was attached to a permanent foundation. In this case, Petitioner did not afford Respondent an opportunity to conduct such an inspection. The nature of the foundation, or lack thereof, is indeterminable from the photo offered as part of Petitioner Exhibit 5, and there is no other evidence in the record from which one could reasonably discern such.

Consequently, given the ambiguity surrounding the circumstances of the mobile home's foundation, the Board finds neither party provided probative evidence with regard to the mobile home's characterization and declines to order a change in its classification.

Regardless of the mobile home's classification, Petitioner needed to provide probative evidence of its true tax value, which he failed to do.

42. Petitioner failed to rebut or impeach Respondent's appraisal and provided no probative evidence with regard to the subject property's true tax value for 2014. The Board finds that Mr. Schnepf's appraisal provides the most accurate market value-in-use for the subject property. While the Board is reluctant to increase assessments, Petitioner was aware that the assessment could increase as a result of the appeal. Accordingly, the Board orders the subject property's total assessment be increased to \$145,000 for 2014.

43. For 2015, the assessed value was \$127,000, a decrease from the \$145,000 determined for 2014, therefore Petitioner had the burden of proof. Petitioner relied on the same evidence and arguments for 2015 as he did for 2014 and we reach the same conclusion that Petitioner failed to show the property's true tax value. Similarly, the Board orders the subject property's total assessment be increased to \$145,000 for 2015.

#### **SUMMARY OF FINAL DETERMINATION**

44. The subject property's assessed value must be changed to \$145,000 for each of 2014 and 2015.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.